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FEDERAL COMMUNICATIONS COMMISSION  
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No. 93-252

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## **I. STATEMENT OF INTEREST**

The SCCC is a coalition comprised of small common carriers providing service to rural America.<sup>1</sup> SCCC's members consist of commercial mobile radio service providers affiliated with rural telephone companies as well as rural telephone companies. The SCCC believes that telephone companies have an important role to play in the formation of the "network of networks" so highly prized by Congress and the Commission. Their participation in the 900 MHz Specialized Mobile Radio ("SMR") market has been specially invited and encouraged by the Commission, but efforts to establish SMR systems in rural geographic areas will be thwarted if the auction rules pertaining to small businesses and rural telephone companies are adopted as proposed. Because the rules that are finally adopted will determine whether SCCC members and other similarly situated entities can enter and compete in the SMR marketplace, SCCC has a vested interest in the outcome of these proceedings.

## **II. COMMENTS**

By now everyone is familiar with the litany that heralds the initiation of a spectrum auction, in which we are reminded that Congress has explicitly directed the Commission to "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants,

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<sup>1</sup> SCCC member companies include: Leaco Rural Telephone Cooperative, Central Texas Telephone Cooperative, Inc., ENMR Telephone Cooperative, Inc., Cellular Mobile Systems of St. Cloud, Texas RSA 3 Limited Partnership, and New Mexico 6-II Partnership, New Mexico RSA 4 - East Partnership and Valley Telecommunications, Inc.

including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."<sup>2</sup> This statute also requires the Commission to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services."<sup>3</sup> While Congress might have been "well aware of the problems that designated entities . . . have in competing against large, well-capitalized companies in auctions and the difficulties they encounter in accessing capital,"<sup>4</sup> it appears from the proposals presented in this Second FNPRM that the Commission is not.

For example, the proposed definition of "small business" is far too narrow to encompass many small rural telephone companies. The proposed definition exclusion of many such entities is particularly frustrating, given the recent entreaty by the Commission that these entities come and join the SMR marketplace. In eliminating the ban on wireline telephone common carriers providing SMR and 220-222 MHz Land Mobile radio and dispatch services,<sup>5</sup> the Commission stated that:

small wireline carriers in rural communities are well positioned to provide SMR and

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<sup>2</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>3</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>4</sup> In re Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Report and Order and Second Further Notice of Proposed Rule Making, PR Docket No. 89-553 (adopted April 14, 1995, released April 17, 1995) (Second FNPRM), at ¶ 123.

<sup>5</sup> See In re Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications, Report and Order, GN Docket No. 94-90, (adopted March 7, 1995, released March 7, 1995).

commercial 220 MHz services in areas that presently are unserved or underserved. Eliminating the wireline restrictions would allow these providers to offer cost-effective services to rural customers by building on their existing infrastructure and presence in the market.<sup>6</sup>

The Commission recognizes that the participation of rural telephone companies in the SMR and commercial 220 MHz market is integral to the fashioning of a seamless, nationwide telecommunications infrastructure. However, it needs to refashion the type of regulatory assistance it proposes to afford small businesses and rural telephone companies in order to make their participation a reality.

**A. The "Designated Entity" Criteria Virtually Exclude Rural Telephone Companies.**

**1. The proposed definition for "small business" is underinclusive.**

The preferences associated with designated entity status are bestowed much differently in the 900 MHz SMR auction than in the recently completed PCS auctions. In contrast to the PCS auctions, where designated entities (i.e., small businesses, minority- and female-owned businesses and rural telephone companies) were entitled to preferential treatment, the proposal for the 900 MHz SMR auction would restrict designated entity preferences, such as reduced down payments, bidding credits and installment payment privileges, solely to those entities that meet the "small business" definition.

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<sup>6</sup> Id. at ¶ 18.

In the Auctions Second Memorandum Opinion and Order,<sup>7</sup> the Commission announced that it would "define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold."<sup>8</sup> For the 900 MHz SMR auction, the Commission has chosen to define "small business" as one that, together with affiliates and attributable investors holding a 25 percent or greater interest in the business, has average gross revenues for the three preceding years of less than \$ 3 million.<sup>9</sup> This is a dramatic change from the \$40 million, average three-year gross revenue threshold afforded small businesses in the broadband and regional narrowband PCS auctions.

The rationale expressed for the proposed adoption of the \$3 million standard is that, compared with PCS, acquisition and build-out costs for 900 MHz systems are likely to be lower. This rationale ignores the circumstances of the rural telephone company, which was so recently singled out and encouraged to enter the SMR marketplace. Many, if not most, rural telephone companies are incapable of meeting the proposed "small business" definition because of the significant amount of capital required to operate a rural telephone company. See generally Petitions for Reconsideration filed by U.S. Intelco Networks, Inc. and National Telephone Cooperative Association challenging "small business" definition in In re Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second

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<sup>7</sup> In re Implementation of Section 309(j) of the Communications Act-- Competitive Bidding, Second Memorandum Opinion and Order, PP Docket No. 93-253, 9 FCC Rcd 7345 (1994) (Auctions Second Memorandum Opinion and Order), at ¶ 145.

<sup>8</sup> Second FNPRM, at ¶ 138.

<sup>9</sup> Id.

Report and Order, PP Docket No. 93-253, 9 FCC Rcd. 2348 (1994); Petition for Reconsideration filed by the Rural Cellular Association challenging "small business" definition in Third Report and Order, PP Docket No. 93-253, 59 Fed. Reg. 26,741 (1994)

The \$3 million gross revenue cap may well encompass many of the female-and minority-owned businesses that have been denied their own preferences in the 900 MHz auction, but it excludes virtually all rural telephone companies. Consistent with the Commission's continued classification of rural telephone companies "designated entities," any definition of "small business" that purports to accommodate all classifications of designated entities must not, by its terms, exclude the majority of rural telephone companies.

Contrary to the Commission's assertions, the fact that rural telephone companies have wireline plant in place is not a rational justification for excluding rural telephone companies from obtaining bidding preferences. The costs associated with operating in a rural geographic areas are vastly higher than those incurred by telephone companies operating in urban areas. This is evidenced by the reliance of rural telephone companies' on the Universal Service Fund and the Rural Utilities Service (formerly Rural Electrification Administration) loans. It is critical, then, that rural telephone companies be afforded the 10 percent bidding credit, and reduced down payment and installment payment option that is slated to be the preference package for small businesses in this auction. Without these advantages, rural telephone companies will face two uphill battles in the SMR marketplace -- entry and sustained existence.

To remedy the problem, SCCC suggests that the Commission adopt a different definition for small business in this proceeding. Specifically, SCCC encourages the

Commission to adopt the same small business revenue threshold as that imposed in the PCS auctions -- \$40 million average gross revenue for the preceding three years. The \$40 million cap will ensure participation by nearly all rural telephone companies.

As a minimum alternative, SCCC suggests the FCC prorate the gross revenue cap based on the amount of spectrum being auctioned. Based on the \$40 million gross revenue cap used for 30 MHz of PCS broadband spectrum, ten MHz of SMR spectrum would equate to a gross revenue cap of \$13.5 million.

As a third alternative, SCCC believes that the Commission should base the small business definition on net revenues rather than gross revenues. Gross revenues are not a rational measure of true assets and liability -- net worth is a more accurate depiction of a company's resources. Accordingly, if the FCC adopts a \$3 million revenue cap, it should be based on net worth, not gross revenue. Failure to modify the proposed definition of small business is patently discriminatory to rural telephone companies and their affiliated businesses whose gross revenues are inaccurate reflections of the finances they have available to invest in new ventures.

**2. The geographic partitioning scheme does not confer preferential treatment.**

Under the Commission's proposal, those rural telephone companies that cannot meet the proposed "small business" criteria will be left on equal footing with all the non-designated entities participating in the auction. The Commission has proposed a geographic partitioning scheme in which rural telephone companies can either (1) form bidding consortia among

whom an MTA license could be divided, or (2) acquire partitioned 900 MHz SMR licenses from other winning bidders through private negotiations before or after the auction. While these options are presented as a "preference" designed to assist rural telephone companies in entering the market, they are analogous to the emperor's new clothes. Rural telephone companies always have the option of privately negotiating for service territory within another licensee's service area. If no other amendments are made to the proposed rules, this will probably be the only way rural telephone companies can acquire 900 MHz SMR spectrum.

**B. No "Entrepreneur's Block" Means Poor Bidding Odds for Rural Telephone Companies.**

The Commission has tentatively concluded that it is unnecessary to create an "entrepreneur's block" for the 900 MHz spectrum auction because there are many licenses available, the spectrum allocation is small, and the anticipated capital outlay for provision of the service should be low. In essence, the Commission seems to imply that this spectrum auction will be more attractive to smaller entities and that all participants should be fairly evenly matched in terms of competitive ability in this service. The scarcity of the 900 MHz SMR spectrum to be auctioned, however, makes the opposite true. Without a set-aside of spectrum for designated entities, rural telephone companies will be forced to bid against some very deep pockets.

As the Commission has stated, "unlike the 800 MHz SMR band, the 900 MHz SMR band is lightly occupied."<sup>10</sup> The MTA-based service areas were chosen purposely "to create

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<sup>10</sup> Second FNPRM, at ¶ 29.



opportunities for both existing licensees and new entrants to meet customer demands for wide-area service."<sup>11</sup> These factors make 900 MHz SMR spectrum exceptionally attractive, if not indispensable, to those larger entities who have been prevented from establishing widespread, cellular-like SMR systems due to the lack of 800 MHz SMR spectrum. The Commission is well aware of a number of heavily-capitalized applicants who have sought and exhausted the supply of 800 MHz SMR frequencies, and then proceeded to obtain license for public safety frequencies in order to aggregate the spectrum required to establish an enhanced SMR system. These entities are likely to submit the high bids for 900 MHz SMR spectrum, to the detriment of rural telephone companies who, without bidding preferences, will be unable to compete. It is important that the Commission recognize how valuable and attractive this spectrum will be, and do all it can to ensure the fair treatment of rural telephone companies in the auction process. Without an "entrepreneur's block" that restricts participation by large businesses, rural telephone companies may be shut out of the 900 MHz SMR auction, especially if the Commission does not adopt a more reasonable definition of "small business".

### III. CONCLUSION

As the Commission has correctly recognized, the participation of rural telephone companies in the 900 MHz SMR service market is important for the establishment of a seamless, nationwide "network of networks." Consequently, the Commission must be mindful

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<sup>11</sup> Id. at ¶ 31.

of the directive of Congress to do all that is necessary to ensure maximum opportunities for rural telephone companies and other designated entities to enter this service. The proposals for rural telephone company participation in the Second FNPRM are inadequate to ensure this participation, and therefore SCCC respectfully requests that the Commission adopt SCCC's recommendations as proposed herein.

Respectfully submitted,

**SMALL COMMON CARRIER COALITION**

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